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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,497	02/13/2002	Edel Bernadette O'Toole	CM2140	7650

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 05/05/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/049,497  
Filing Date: February 13, 2002  
Appellant(s): O'TOOLE ET AL.

**MAILED**  
**MAY 05 2006**  
**GROUP 1600**

\_\_\_\_\_  
Idris N. McKelvey  
For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed on 4-1-04 and supplemental appeal brief filed 2-3-06 appealing from the Office action mailed 11-3-04.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

<b>5,290,562</b>	<b>Maybeck et al.</b>	<b>3-1994</b>
<b>JP 57-109711</b>	<b>Hideo et al.</b>	<b>7-1982</b>

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,290,562 to Maybeck et al in view of JP 57-109711 (JP, submitted on PTO-1449) or JP in view of Maybeck et al.

Maybeck teaches cosmetic compositions containing methyl tyrosinate, ethyl tyrosinate or stearyl tyrosinate for increasing the content of melanin and thus improve the hair complexion. Maybeck teaches that tyrosine being hydrophilic does not penetrate easily through the corneal layer and thus suggests using tyrosine esters such as methyl or ethyl tyrosinate and incorporated in liposomes (col. 2, lines 11-40 & lines 57-65). Thus, Maybeck teaches the composition containing tyrosinate salts for both skin melanogenesis as well as for improve the complexion or retard the graying of hair

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(example 8). Maybeck does not teach at least one other amino acid and a hair-conditioning agent, as claimed.

JP teaches a hair cosmetic composition comprising quaternary ammonium compounds and an amino acid selected from the group consisting of glycine, valine, histidine, tryptophan, threonine etc., (page 1). JP teaches that the composition shows an excellent combing effect and for excellent softness of hair. The quaternary ammonium compound of JP reads on the instant conditioning agent. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to combine the hair treatment composition of JP, containing amino acids and hair conditioning agent, with the composition of Maybeck, which contains tyrosine methyl ester, or vice-versa because while Maybeck suggests tyrosinate esters unexpectedly make it possible to obtain a measurable increase in the amount of melanin and thus help treat graying of hair, JP suggests the hair care composition for better combability and softness. Thus, both Maybeck and JP teach compositions for improving hair conditions and accordingly the motivation to combination the references flows logically. Therefore, a skilled artisan would have expected to improve the hair combing, softness while simultaneously treating the hair for graying by increased melanin production.

#### **(10) Response to Argument**

Appellants state that instant composition targets the hair shaft, providing the benefit of improved strength and condition the hair with a specific combination of amino

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acid compounds and hair conditioning agents. Appellants argue that there is no suggestion or motivation to combine Maybeck and Hideo, and a prima facie case of obviousness has not been established because the composition of Maybeck addresses a different problem and functions in a different manner than the composition of Hideo and that one skilled in the art would not look to the teachings of one of the references to modify or improve the teachings of the other. Appellants argue that Maybeck teaches and claims compositions and their methods of use for increasing melanin formation on the skin and scalp, to accelerate the tanning of the skin by improving melanogenesis in the skin. Appellants argue that in contrast to Maybeck, the composition of Hideo provides improved combing properties and hair softness by targeting the shaft of existing hair, using a hair cosmetic composition comprising amino acids such as glycine, L-valine, L-isoleucine, L-serine, L-threonine, L-phenylalanine, and L-tryptophan, in combination with a certain quaternary ammonium salt in a specific ratio. It is also argued that Hideo does not teach or suggest the use of tyrosine esters. Appellants argue that one of an ordinary skill in the art would not look to a composition, which provide a benefit by acting below the surface of the skin to modify or improve a composition, which provides benefit to the shafts of damaged hair above the surface of the skin. These arguments are not found persuasive because instant claims 1-4, 8 and 9 are directed to a composition and not a method, as also acknowledged by Appellants. The argument that the composition of Maybeck is not directed hair shaft is not persuasive because with respect to the composition claims, the prior art composition

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i.e., a combination of the tyrosine esters of Maybeck and amino acid compounds of Hideo, need not be used for the same purposes as that of the instant invention.

With respect to example 8 of Maybeck, Appellants argue that the composition acts on the scalp, penetrating the epidermis to improve melanin formation in the hair follicle and to enable new growth of hair rather than act on hair shaft. Appellants' argument is moot because instant claims (composition as well as method) do not recite the argued feature of hair shaft. Furthermore, while Maybeck is silent regarding the effect on hair shaft, Appellants have not shown that the composition resulting from the teachings of Maybeck and Hideo does not act on hair shaft. The argument that the composition of Hideo can be used as either a rinse-out or leave-in type hair cosmetic is moot because instant claims do not exclude either types of the hair compositions and merely state hair composition and a method of applying. Appellants' argument that Hideo fails to teach or suggest applying the hair cosmetic composition to the skin or scalp is not persuasive because without applying the composition (of Hideo) to hair scalp, one cannot achieve the desired effect on hair shaft. In other words, for the composition to reach the hair shaft, it has to be in contact with the scalp. Thus, it is the position of the examiner that the composition of Hideo does act on scalp as well as hair shaft and that the combination of the teachings of Hideo and Maybeck does teach the claimed composition as well method and hence the instant rejection is proper. For the above reasons, it is believed that the rejections should be sustained.


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**(11) Related Proceeding(s) Appendix**


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

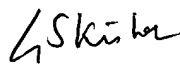
Respectfully submitted,



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5-2-2006

  
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